

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

THOMAS HENRY LEE BARFELL,

Plaintiff,

v.

Case No. 13-C-854

WINNEBAGO COUNTY JAIL et al.,

Defendants.

**ORDER GRANTING [44] DEFENDANTS' MOTION TO COMPEL AND DENYING
[50] PLAINTIFF'S THIRD MOTION TO APPOINT COUNSEL**

Plaintiff Thomas Henry Lee Barfell advances two claims in this § 1983 civil rights action:

(1) Correctional Officers Weisse, Rasmussen, Netzel, and Koepp violated his First Amendment rights by denying his outgoing mail privileges; and (2) medical professionals Hoernke, Glaeser, Seidel, O'Decker, Finnegan, and Jane Doe violated his Eighth Amendment rights by failing to treat his asthma and tooth and jaw pain. (ECF No. 17.) On February 5, 2014, defendants Hoernke, Finnegan, Seidel, and Glaeser filed a motion to compel discovery, seeking an order directing Barfell to answer their first set of interrogatories and document requests within 30 days. (ECF No. 44.) The defendants allege they mailed Barfell a copy of the discovery requests on November 14, 2013, and when they discovered that he was no longer an being held at Winnebago County Jail, they mailed a second copy to his forwarding address. Despite additional attempts to locate Barfell, Defendants were unable to contact him.

On February 12, 2014, Barfell filed a document entitled "Notice of Motion and Motion Appealing Motion to Compel Discovery Pursuant to Rule 37(a)." (ECF No. 49.) The court construes this document as a response to the defendants' motion to compel. In the response, Barfell

alleges that he was homeless, had no mailing address, and did not receive any information regarding discovery requests until February 5, 2014. He asserts that he will respond by the discovery deadline of April 23, 2014. The court hereby grants the defendants' motion to compel and orders Barfell to respond to the defendants' first set of discovery requests by March 7, 2014. Failure to comply may result in the dismissal of Barfell's claims. Although the court fixes a final deadline for discovery, parties are expected to respond to requests for production in a timely manner. This helps the litigation move forward on schedule and prevents surprise disclosures on the final day of discovery. The defendants also requested an extension of the discovery and motion filing deadlines, although they did not suggest dates for the new deadlines. The court will reset the discovery deadline to May 23, 2014, and the motion filing deadline to June 23, 2014.

Barfell also filed his third motion to appoint counsel, stating that his anxiety and depression cause him to lay around all day affect his concentration and ability to sleep. (ECF No. 50.) The court addressed Barfell's concerns regarding his mental health on August 12, 2013, and his lack of legal training on February 4, 2014. (ECF Nos. 10 and 43.) The court reiterates that at this time, after considering the competency of the litigant and the complexity of the case, the court does not find that appointment of counsel is warranted. Barfell's third motion to appoint counsel is therefore denied, again without prejudice.

Finally, in his third motion to appoint counsel, Barfell also argues that although Carolyn Furman was initially dismissed in the Screening Order, she should be added to the lawsuit because she failed to supply him with an inhaler and also responded to request forms regarding his tooth and jaw pain. (ECF No. 50.) Barfell explains that he initially referred to Furman as "Jeannie" in his amended complaint, and that Furman is also the Jane Doe he thought no longer worked at the

Winnebago County Jail. For now, Barfell's informal request to add an additional defendant will be denied, although the court would reconsider the request upon formal motion. At this stage of the proceedings, a plaintiff may seek to add an additional defendant by filing a motion for leave to file an amended complaint. If Barfell files such a motion, he must also attach a copy of the amended complaint he seeks to file. *See* Civil L.R. 7(i) & 15 (attached).

SO ORDERED this 14th day of February, 2014.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court